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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MARIO LEDESMA, an individual;
12 RUTH LEDESMA, an individual; and
13 LAURA FLORES, an individual,

14 Plaintiffs,

15 v.

16 FCM CORPORATION; WILMINGTON
17 FINANCE; WILSHIRE CREDIT
18 CORPORATION; T.D. SERVICE
COMPANY; and U.S. BANK
NATIONAL ASSOCIATION,

Defendants.

CASE NO. 09-CV-1837-JM (MDD)

**ORDER GRANTING
DEFENDANT WILSHIRE
CREDIT CORPORATION'S
MOTION FOR SUMMARY
JUDGMENT**

Doc. No. 86

19 Plaintiffs Mario Ledesma, Ruth Ledesma, and Laura Flores (collectively, "Plaintiffs")
20 brought this action for claims arising from a residential mortgage transaction. (Doc. No. 1.)
21 Defendant Wilshire Credit Corporation ("Wilshire") now moves for summary judgment on the
22 sole remaining claim against it. (Doc. No. 86.) Pursuant to CivLR 7.1(d)(1), the court finds this
23 matter appropriate for disposition without oral argument. For the reasons set forth below, the
24 court GRANTS Wilshire's motion for summary judgment.

25 **I. BACKGROUND**

26 On or about October 13, 2006, Plaintiffs purchased a single-family home located in San
27 Marcos, California by obtaining two loans from Defendant FCM Corporation ("FCM") totaling
28 \$560,000 and secured by two deeds of trust on the purchased property. (Doc. No. 54, Third

1 Amended Complaint, hereafter “TAC,” ¶ 6.) Shortly thereafter, Defendant Wilmington
 2 Finance (“Wilmington”) purchased Plaintiffs’ loans from FCM. (Id. ¶ 7.) In November of
 3 2006, Wilshire, acting as an agent for Defendant U.S. Bank National Association (“U.S.
 4 Bank”), purchased the loans from Wilmington. (Id.) Wilshire subsequently continued to
 5 service Plaintiffs’ loans. (Id. ¶ 8.) After Plaintiffs began experiencing difficulty making their
 6 loan payments, a Notice of Trustee’s Sale was executed indicating that their home would be
 7 sold at a foreclosure sale on or about April 4, 2010. (Id. ¶ 17.)

8 Plaintiffs claim that, prior to the foreclosure, they sent a Qualified Written Request
 9 (“QWR”) to Wilshire through their counsel on or around August 6, 2009 requesting certain
 10 information, including whether their loans were in compliance with applicable federal and state
 11 laws, the identity of the holders of the notes secured by the deeds of trust, and a calculation of
 12 the principal and interest on the loans. (Id. ¶ 65.) According to Plaintiffs, the response from
 13 Wilshire “did not fully provide the requested information.” (Id. ¶ 66.) As a result of Wilshire’s
 14 failure to disclose all of the information sought, Plaintiffs claim they have suffered actual
 15 damages, “including, but not limited to”:

16 (1) severe mental anguish, emotional distress, inconvenience, and worries that
 17 they will lose their home; (2) severe mental anguish, emotional distress,
 18 inconvenience, and worries that their mortgage transactions with Defendants
 19 were and are in violation of federal and state laws; (3) emotional and mental
 20 distress, frustration, and humiliation; (4) Plaintiffs have spent considerable time
 21 and money attempting to resolve the problems with their mortgage and to
 22 discover the information sought from Defendants in the QWR, preparing
 23 correspondences, expenses for preparing, photocopying and requiring certified
 24 copies of correspondence; (5) Plaintiffs’ [*sic*] have paid late fees; (6) Plaintiffs
 25 have paid out of pocket expenses; (7) mental anguish that Plaintiffs’ [*sic*] are
 26 ultimately facing foreclosure of their home; (8) Plaintiffs do not have the ability
 27 to prove their case because of Defendants [*sic*] failure to disclose and provide
 28 the requested information to Plaintiffs; (9) Plaintiffs have incurred legal fees;
 (10) Plaintiffs do not have the ability to determine whether they have incurred
 further possible damages, such as prohibited fees or rate increases, or the
 crediting of Plaintiffs’ payments to improper accounts; (11) Plaintiffs’ [*sic*] do
 not have knowledge of, or the access to crucial information (Plaintiffs do not
 have the requested information including, but not limited to, the current
 party(ies) claiming a beneficial interest in the note, the identity of all holders of
 the note secured by the deed of trust, the calculation of the principal and interest,
 information on the appointment of the trustee and all substitute trustees,
 documentation of all assignments, transfers or sale of the note, copies of all
 checks or other evidence of payments made by the Plaintiffs, all debits and
 credits to the Plaintiffs’ accounts, documentation of all mortgage assignments
 and an accounting of all attorney fees, costs).

1 (Id. ¶ 68.)

2 Following multiple rounds of motions to dismiss, Plaintiffs' only remaining claim
3 against Wilshire is their allegation that Wilshire violated the Real Estate Settlement Procedures
4 Act ("RESPA") by failing to properly respond to their QWR. (See Doc. No. 63.) Wilshire now
5 moves for summary judgment on this claim. (Doc. No. 86.) The motion is unopposed.

6 **II. LEGAL STANDARD**

7 A motion for summary judgment shall be granted where "there is no genuine issue as
8 to any material fact and . . . the moving party is entitled to judgment as a matter of law." FED.
9 R. Civ. P. 56(c); Prison Legal News v. Lehman, 397 F.3d 692, 698 (9th Cir. 2005). The
10 moving party bears the initial burden of informing the court of the basis for its motion and
11 identifying those portions of the file that it believes demonstrate the absence of a genuine issue
12 of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). There is "no express or
13 implied requirement in Rule 56 that the moving party support its motion with affidavits or
14 other similar materials negating the opponent's claim." Id. (emphasis in original). The
15 opposing party cannot rest on the mere allegations or denials of a pleading, but must "go
16 beyond the pleadings and by [the party's] own affidavits, or by the 'depositions, answers to
17 interrogatories, and admissions on file' designate 'specific facts showing that there is a genuine
18 issue for trial.'" Id. at 324 (citation omitted). The opposing party also may not rely solely on
19 conclusory allegations unsupported by factual data. Taylor v. List, 880 F.2d 1040, 1045 (9th
20 Cir. 1989).

21 The court must examine the evidence in the light most favorable to the non-moving
22 party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). Any doubt as to the existence
23 of any issue of material fact requires denial of the motion. Anderson v. Liberty Lobby, Inc.,
24 477 U.S. 242, 255 (1986). On a motion for summary judgment, when "the moving party bears
25 the burden of proof at trial, it must come forward with evidence which would entitle it to a
26 directed verdict if the evidence were uncontroverted at trial." Houghton v. South, 965 F.2d
27 1532, 1536 (9th Cir. 1992) (emphasis in original) (quoting Int'l Shortstop, Inc. v. Rally's, Inc.,
28 939 F.2d 1257, 1264-65 (5th Cir. 1991), cert. denied, 502 U.S. 1059 (1992)).

1 **III. DISCUSSION**

2 According to the undisputed evidence, Wilshire served each plaintiff with an identical
3 set of Requests for Admission (“RFA”) on or around December 22, 2010. (Doc. No. 86-1.)

4 Each RFA stated the following:

5 1. Admit that Responding Party did not send a qualified written
6 request under 12 U.S.C. section 2605 to Propounding Party.

7 2. Admit that Responding Party did not send a letter to Propounding
8 Party that contained a statement of the reasons for Responding Party’s belief that
9 the account was in error.

10 3. Admit that Propounding Party’s response to any qualified written
11 request complied with 12 U.S.C. section 2605(e).

12 4. Admit that Responding Party has suffered no actual damages as
13 a result of any failure by Propounding Party to respond to a qualified written
14 request under 12 U.S.C. section 2605.

15 (Id. at Exhs. 1-3.) To date, Plaintiffs have not responded to the RFAs. (Id. ¶¶ 5, 8-9.)

16 Under FED. R. CIV. P. 36(a)(3), a matter is deemed admitted where a party to whom an
17 RFA is directed fails to serve a written answer or objection to the RFA within 30 days. The
18 matter is then “conclusively established unless the court, on motion, permits the admission to
19 be withdrawn or amended.” FED. R. CIV. P. 36(b). Such admissions “may be relied on as the
20 basis for granting summary judgment.” Conlon v. United States, 474 F.3d 616, 621 (9th Cir.
21 2007). Therefore, for purposes of this motion, Plaintiffs have admitted (1) that they never sent
22 a QWR or any other letter that might qualify as such to Wilshire; (2) that any response from
23 Wilshire was compliant with the requirements of RESPA; and (3) that Plaintiffs suffered no
24 actual damages from any perceived failure by Wilshire to adequately respond to a written
25 request. Given these facts, Plaintiffs have failed to make out a claim of a RESPA violation
26 against Wilshire. The court therefore grants summary judgment in favor of Wilshire with
27 regard to Plaintiffs’ fourth cause of action.

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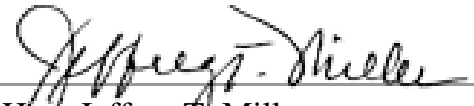
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1 **IV. CONCLUSION**

2 For the foregoing reasons, the court hereby GRANTS Defendant Wilshire Credit
3 Corporation's motion for summary judgment on Plaintiffs' RESPA claim. (Doc. No. 86.)
4 There are no remaining claims against Wilshire in this action.

5 **IT IS SO ORDERED.**

6 DATED: June 27, 2011

7 
8 Hon. Jeffrey T. Miller
United States District Judge